

**Prepared Statement of
Richard Ben-Veniste, former Commissioner,
National Commission on Terrorist Attacks Upon the United States
before the Subcommittee on National Security,
Emerging Threats and International Relations
Committee on Government Reform
U.S. House of Representatives
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Chairman Shays, Ranking Member Kucinich, Members of the Subcommittee on National Security: Thank you for the privilege of appearing before you today to testify on the topic of “Emerging Threats: Overclassification and Pseudoclassification.”

I would like to address my remarks to three separate topics:

- First, the recommendations of the 9/11 Commission as they relate to the question of overclassification;
- Second, the experience of the 9/11 Commission with respect to declassification of its final report; and
- Third, the experience of the Commission – now former Commission – with respect to the last staff report submitted to the Administration for declassification. That report, entitled “The Four Flights and Civil Aviation Security,” was submitted to the Administration on the last day of the Commission’s existence -- August, 21, 2004.

Recommendations of the 9/11 Commission

Let me start with the recommendations of the 9/11 Commission with respect to classification. All Commissioners understand the “need to know” principle and its importance. That principle exists for a good reason: the need to protect sources and methods of intelligence.

The Commission found, however, that the failure to share information was the single most important reason why the United States government failed to detect and disrupt the 9/11 plot. There were bits and pieces of critical information available in different parts of the government – in the CIA, the FBI, and NSA – but the pieces of information were never shared, and never put together in time to understand the 9/11 plot.

We cannot say for certain that the sharing of information would have succeeded in disrupting the plot. No one can. But we know for certain that the failure to share information contributed to the government’s failure to interrupt the plot. The failure to share information may have cost lives. We paid a terrible price on September 11 because too much information was kept secret or otherwise not shared.

Within the intelligence community, there are two basic reasons why information is not shared:

First, the intelligence community is a collection of fiefdoms, fifteen separate agencies.

- They have separate cultures;
- They desire to protect their own turf;

- They distrust the ability of counterparts to protect their information; and
- They designed their computers so that they cannot transmit data easily from one agency to another;

Second, information is not shared because of the “need to know” principle. I want to underscore again: All Commissioners understand the importance of protecting sources and methods.

- But the “need to know” principle also results in too much classification and too much compartmentation of information.
- Not only do we end up keeping secrets from the enemy, but we end up keeping secrets from ourselves.
- Timely information does not get to the analyst and to the policymaker.
- Important information is denied to the American people.

Mr. Chairman, the chief reason the 9/11 Commission recommended the creation of a Director of National Intelligence was so that someone could “smash the stovepipes,” order the sharing of information and force cooperation across the Intelligence Community.

- We want one individual in charge of information technology, to unclog the arteries of information sharing across the intelligence community.
- We want one individual in charge of security rules, and one set of

rules for security, so that as much information as possible flows to analysts, policymakers, and those on the front lines with security responsibilities.

- We want to make sure that the President gets the information he needs to do his job -- and so does the border inspector and the cop on the beat.

Information has to flow more freely. Much more information needs to be declassified. A great deal of information should never be classified at all.

Mr. Chairman, my personal view is that an unconscionable culture of secrecy has grown up in our nation since the cold War. Secrecy has often acted as the handmaiden of complacency, arrogance and incompetence. Sen. Pat Moynihan, a passionate opponent of unnecessary secrecy in government, called for a “counter culture of openness, a climate which simply assumes that secrecy is not the starting place.” It is time we heeded that call.

The Nazi War Crimes Disclosure Act signed by President Clinton in 1998, created an Interagency Working Group to implement the Act’s mandate of declassifying documents relating to WWII war crimes and their perpetrators still kept secret by the government. As one of three non-government members of the IWG appointed by President Clinton, I have had direct experience with the difficulties of getting public release of records stamped “secret.” So far, over 8 million pages of previously classified documents have been released. National security has not been jeopardized. Yet, but for the Act, these records would still be secret.

Recently, despite the fact that relevant records are in some cases more than 50 years old, the CIA balked at full compliance, causing a delay of more than a year in the IWG’s work. Finally, to break the

impasse, the IWG had to seek Congressional intervention. The Act's authors, Sen. Mike DeWine and Rep. Carolyn Maloney, rejected the CIA's argument for withholding important documents in a meeting with IWG and CIA officials. Ultimately, the CIA abandoned its opposition and has promised to comply.

The Commission Experience with Declassification

Mr. Chairman, the Commission had many challenges in gaining access to the highly-classified and sensitive material it needed to conduct its investigation and complete its work. We had a number of differences with the Executive branch on questions of access. You are familiar with many of them, and I will not recount them in detail.

Suffice it to say, with strong support from the American public and from many Members of Congress, the Commission eventually gained access to the documents and witnesses it needed to conduct its work.

The Commission had similar challenges in the declassification review process. We saw it as our obligation to make as much information available to the American public in as timely a fashion as possible. Within the Administration, there were different voices. Clearly, some individuals and agencies wanted to block the release of material. Because our bi-partisan Commission spoke with a consistently unanimous voice on the issue of transparency, we were able to overcome the objections and move forward.

Beginning with Commission staff statements, we developed a process where a White House-designated point of contact coordinated the review and declassification of the Commission's written product. Our point of contact, Dan Levin, then at the Justice Department, did an

exemplary job. He kept the agencies on tight deadlines, and worked with us to solve problems and keep the process on track. Lawyers from the White House Counsel's office also worked hard to solve issues in the pre-publication review process. Solving problems, in most cases, meant modest word changes and minor massaging of the text.

The staff statements were in large measure the building blocks for the final Report. The process we established for declassification of the staff statements helped us immensely in the declassification review of the Commission's final Report.

We are very proud to say that the final Report of the Commission was issued without a single redaction. There was not a single paragraph, not a single sentence, blacked out from what we believe we needed to say to tell the full story of 9/11 of the American public. We commend the Administration for recognizing that a critical component for enhancing national security was to tell the story of 9/11 completely and credibly.

The 9/11 Commission Report – without redactions – helped to win the public's interest and the public's confidence. The integrity of the report helped our government and nation move forward with the reform bill signed into law by the President in December.

Staff Report on the Four Flights and Civil Aviation Security

The Commission also had a good experience with the Administration in the completion of two staff reports -- on Terrorist Finance and Terrorist Travel -- that were issued, without redactions, on the last day of the Commission's existence, August 21, 2004.

On the last day of its existence the Commission also submitted its final staff report to the Administration for declassification review. That staff

report was entitled “The Four Flights and Civil Aviation Security.” As in the case of the other two staff reports, it provides a wealth of additional detail in support of the facts and conclusions in the Commission’s final Report.

As the Commission’s General Counsel made clear to the Administration at the time of this staff report’s submission, he and several staff retained their security clearances even after the end of the life of the Commission. Thus, Commission staff still should have been able to work with the Administration to address concerns about classification in a mutually satisfactory manner, so that this staff report – like the two previous staff reports – could be issued without redactions. As this process had worked so well previously, we did not anticipate that it would not be utilized with respect to the final staff report.

We cannot say with certainty why the declassification review of this last staff report took so long, and why the outcome was so unsatisfactory. Part of the answer is that the Administration decided it could no longer negotiate with former Commission staff – including the authors of the report – because they became private citizens after August 21st. The Administration refused to engage former Commission staff in a dialogue about the declassification process. In the absence of dialogue and pressure from an existing Commission, the declassification process took an inordinate amount of time and produced an unsatisfactory result.

What we find especially troubling about the redactions in this last staff report is that most of them relate to material known as “Sensitive Security Information,” or SSI, information under the control of the Federal Aviation Administration before 9/11, and under the control of the Transportation Security Administration today. There is little material in this last staff report from the Intelligence Community. So we have the remarkable situation that the nation’s most highly classified secrets – those that relate to NSA intercepts and covert action, and those

that go into the President's Daily Brief – got declassified and put in a public report read by millions of citizens. In contrast, far less sensitive material in this last staff report got blacked out or replaced with blank pages. Indeed, one redaction deletes a sentence from public testimony before the Commission.

Some of the redactions relate to the performance of airport security checkpoints and equipment before 9/11. We believe the public needs to know what the Commission staff wrote about checkpoint performance.

Some of the redactions relate to security warnings associated with FAA notices to the airlines leading up to 9/11. We believe the public needs to know the nature of those warnings.

Some of the redactions relate to a description of the FAA's "No-Fly" List and criticism of how it was administered. We believe the public needs to know the nature of that criticism.

We do not believe these redactions are justified, because they concern *a civil aviation security system that no longer exists*. That system is gone forever, and we see no public purpose served in keeping its flaws hidden. Those flaws certainly were apparent to the hijackers; the American people should know about them in full as well.

These redactions are a disservice to the 9/11 families, to the Commission, and to the nation. They deprive the public of the information it deserves. They stoke the fires of public cynicism. Redactions feed conspiracy theories and undermine confidence. Redactions inevitably lead to questions: What won't our leaders tell us? What won't they allow us to know? Redactions serve neither the public interest nor the cause of truth.

Conclusions

Mr. Chairman, the Public Discourse Project, a not for profit organization of which each former 9-11 Commissioner is a member, offers a simple and constructive proposal: If the Administration is willing to meet with former Commission staff, including those who drafted this report, we are confident that a report without redactions can be produced in short order.

Such a report, with integrity and credibility, is exactly the kind of report that the American government should produce -- and the kind of report that the American people deserve.

Thank you. I will be pleased to try to answer your questions. # # #

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